

EXHIBIT 26



Deposition of:
Michael McDonald , PhD

February 28, 2020

In the Matter of:
**Fair Fight Action, Inc., Et Al. v.
Raffensperger, Brad, Et Al.**

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1 was for the PI work?

2 A As I recall, it was roughly \$10,000.

3 Q Let's get into Roman numeral I, the
4 summary paragraph. You say that you were asked by
5 the plaintiff's counsel to investigate the
6 reliability of a list of registrants. In what sense
7 are you using the word "reliability" here?

8 A I'm using it in the sense that -- whether
9 or not that list is accurately reflective of people
10 who are otherwise still residing at the address that
11 they find on their voter registration record.

12 Q So basically assessing, among the 313,000
13 people, how many have moved and how many haven't; is
14 that a fair approximation?

15 A For the purposes of this report, yes. I
16 would say yes, that's true.

17 Q And then are you offering opinions about
18 if the list isn't reliable that the removals were
19 not appropriate?

20 A That's a legal question, so -- I'm just
21 providing you the evidence of what I've looked at,
22 so I can't provide a legal opinion on that.

23 Q So it's fair to say then you've analyzed
24 this list, and the legal effect, you're not
25 commenting on that. You're just saying this is what

1 where they were registered to vote, and ultimately
2 that's -- the evidence of that fact is what your
3 report is about; is that correct?

4 MR. CREELAN: Objection as to form.

5 A Yes, primarily that is what the report is
6 trying to address is whether or not the list
7 maintenance purposes or processes in Georgia are
8 indeed identifying people who have moved from their
9 registration address.

10 BY MR. TYSON:

11 Q And you're not opining on the intent
12 behind Georgia's voter list maintenance procedures?

13 A Yes, I don't have any knowledge of the
14 intent of the Secretary of State's office behind
15 their list maintenance procedures.

16 Q Next bullet on the top of page 3 talks
17 about the national change of address matches and
18 compares that with the no contact registrants. Can
19 you explain a little bit more about what that bullet
20 is summarizing? I know we'll get into some of the
21 meat of it in a little bit, but maybe just a
22 high-level summary?

23 MR. CREELAN: Objection as to form.

24 A Yeah --

25 BY MR. TYSON:

1 A Yeah. Yeah.

2 Q So the thing we're discussing, the purge
3 list is the list of people who actually had their
4 status moved from inactive to canceled. Is that the
5 correct group?

6 A It is my understanding that the 290,134
7 would be, yes, those people -- inclusive of those
8 people, yes.

9 Q And it's your understanding that no one is
10 ever removed from the voter file, just that their
11 voting status has changed to canceled, correct?

12 MR. CREELAN: Objection.

13 A Yes. There is a canceled file that exists
14 as well, so information about records that have been
15 canceled are retained within the election management
16 database within Georgia.

17 BY MR. TYSON:

18 Q Based on your experience in election
19 administration, would you say voters who are on a
20 canceled list are no longer on the -- no longer in
21 the voter registration database?

22 A No, they are still in the database, it's
23 just that they have a different status than other
24 people who are recorded within the database.

25 Q And what I'm trying to understand there --

1 I know that the term "purge" is used extensively in
2 the litigation and in your report. Purge, I would
3 understand, is the records are gone, but what you're
4 saying is on the purge list, those individuals are
5 still in the voter registration database, they're
6 just not eligible to vote.

7 MR. CREELAN: Objection as to form.

8 A Correct, they are still in the database.
9 They still have a record -- persistent record within
10 the database, yes. So if we wanted to restore them,
11 it would be possible to restore those records.

12 BY MR. TYSON:

13 Q Is there a reason why you chose the term
14 "purge list"?

15 A It's what I just consider what we're
16 talking about here to be the process of removals
17 from active status or inactive status to a canceled
18 status.

19 Q And have you consistently referred to
20 individuals being moved to a canceled status in
21 other states as a purge?

22 MR. CREELAN: Objection as to form.

23 A Yes, when I speak with reporters or speak
24 at -- to election administrators at various events,
25 I generally use the shorthand "purge."

1 BY MR. TYSON:

2 Q By using the term "purge," are you
3 implying that something wrong was done?

4 MR. CREELAN: Objection as to form.

5 A No.

6 BY MR. TYSON:

7 Q Let's begin next looking at the
8 characteristics of the registrants on the purge
9 list. First of all, you're reporting the statistics
10 based on kind of the reason someone was put in
11 inactive status; is that correct?

12 MR. CREELAN: Objection as to form.

13 A Correct, so in -- as I understand what the
14 NGE list was at the time that it was generated was
15 that these are individuals who are in inactive
16 status, and it was not -- that was in October 30th,
17 and it wasn't until December that they were actually
18 moved from an inactive status to a canceled status
19 within the database. So at the time that the list
20 was generated, these would be people who were in an
21 inactive status.

22 BY MR. TYSON:

23 Q So let me give you a hypothetical. I'm a
24 registered voter; I'm an active voter. How would
25 I -- what are the steps that would be necessary for

1 of Hispanic origin registrants on the purge list as
2 compared to the voter file. Are you with me on
3 that?

4 A Yes.

5 Q And so is that a disparate impact on white
6 voters?

7 MR. CREELAN: Objection as to form. I
8 have to -- I have to clarify my objection because
9 it'll come up again for the record so it's clear.
10 He's already testified his report doesn't and he's
11 not here to opine on the legal significance of the
12 statistics that he's talking about. So when you ask
13 a question that asks about the disparate impact,
14 which is, of course -- has legal significance, I
15 think it assumes something that he's already
16 disclaimed in his responses.

17 So I could keep objecting, but I think it
18 might help you for me to clarify that so you can
19 tailor your question to that.

20 MR. TYSON: Thank you.

21 BY MR. TYSON:

22 Q Let me try to ask it this way: The
23 sentence about 2.0 percentage points more white not
24 of Hispanic origin registrants on the purge list,
25 does that mean that more -- does that mean that

1 there are more white voters on the purge list than
2 there are in the overall voter registration
3 database?

4 A Yes, that is correct.

5 Q And likewise, in the next paragraph that
6 there are 2.9 percentage points fewer black not of
7 Hispanic origin registrants on the purge list as
8 compared to the voter file, does that mean there are
9 fewer black voters on the purge list than their
10 share of the voter file?

11 A On the overall purge list, that is
12 correct. There are some subcategories of those
13 lists where that does not hold true, so -- and as I
14 understand with respect to the no contact list
15 that -- well, in particular, not as I understand,
16 but in particular with respect to the no contact
17 list there are -- this tendency is actually reversed
18 for those that we find a greater share of
19 African-Americans on the no contact -- list for the
20 reason for no contact than on the overall NGE list.

21 Q Can you explain that to me, the difference
22 there because I see that it still says there are 1.0
23 percentage points fewer registrants for no contact
24 as compared with the voter file for black not
25 Hispanic, so if you could walk me through what you

1 just described, I'd appreciate it.

2 A Right. So if we look at Table 1 on page
3 9, what I'm trying to explain here is that although
4 there are correctly a greater share of whites not of
5 Hispanic origin on the overall NGE list or purge
6 list, if you look within the racial categories
7 African-Americans are showing up under the no
8 contact designation at a higher percentage than they
9 are in the NCOA designation or the returned mail
10 designation is the gist of what I'm saying here.

11 Q But you'd agree with me that
12 African-American registrants as a percentage for the
13 no contact list is still lower than the overall
14 percentage of African-Americans in the November 15th
15 voter file, correct?

16 A That is correct.

17 Q And I believe you've testified you're not
18 drawing any conclusions as to cause of why that
19 might be, right?

20 MR. CREELAN: Objection as to form.

21 A In terms of the racial demographic
22 characteristics, no, I'm not drawing any
23 conclusions.

24 BY MR. TYSON:

25 Q Let me keep working through the tables

1 higher percentage captured by no contact than by
2 NCOA and returned mail. Am I reading that right?

3 A That is correct.

4 Q So when you noted a higher percentage of
5 black voters for no contact versus other methods,
6 that's just an observation, correct, it's not
7 anything beyond that?

8 MR. CREELAN: Objection as to form.

9 A I'm not -- I wasn't asked to provide an
10 opinion as to the significance of that, so I am
11 simply noting the statistics as they exist within
12 the NGE list and on the voter file.

13 BY MR. TYSON:

14 Q Let's turn next to page 11 and your NCOA
15 match analysis.

16 A I'm there.

17 Q Okay. So you contacted the firm Latino
18 Decisions -- I guess I was a little unclear. Did
19 Latino Decisions engage L2 and TargetSmart or did
20 you engage them for the phone number match and then
21 provide that information to Latino Decisions?

22 A I directed Latino Decisions to engage L2
23 and TargetSmart to do the NCOA match and produce
24 phone numbers for people who are on the NGE list.

25 Q And do you recall the cost for Latino

1 business reason and then had moved back, and they
2 had filed one of these NCOAs as well.

3 So we had that prior discussion about why
4 that may be true in the deposition, so that's
5 reaffirming again what I said previously.

6 Q The other thing that struck me reading
7 through the survey was some of the questions that
8 you didn't ask. And so you didn't ask whether
9 someone recalled receiving a notice from the
10 Secretary of State or their Board of Elections about
11 the status of their voter registration, right?

12 A That's correct.

13 Q Add you didn't ask if someone had updated
14 the address on their driver's license and whether
15 they had checked to update their voter registration
16 or uncheck that box.

17 A That is correct.

18 Q When you were conducting your analysis, at
19 any point did you look at the larger voter
20 registration database to determine if any of the
21 individuals you surveyed possibly had a duplicate
22 registration in the voter registration database?

23 MR. CREELAN: Objection as to form.

24 A I did not.

25 BY MR. TYSON: